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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

THIRD APPELLATE DISTRICT

(El Dorado)

THE PEOPLE,

Plaintiff and Respondent,

v.

JESUS CRUZ TORRES,

Defendant and Appellant.

C083981

(Super. Ct. No. S14CRF0012)

After pleading no contest to possession of a controlled substance for sale, the trial court imposed drug education program and crime lab fees, and attendant penalty assessments. Defendant Jesus Cruz Torres appeals the imposition of the penalty assessments, contending the drug education program and crime lab fees are not fines, and are not subject to penalty assessments. We affirm the judgment.

BACKGROUND

In April 2014, defendant pleaded no contest to possession of a controlled substance for sale, methamphetamine.¹ (Health & Saf. Code, § 11378.)² Pursuant to the plea agreement, the trial court granted defendant three years' formal probation, and imposed various fines and fees, including a drug education program fee under section 11372.7 and a crime lab fee under section 11372.5. The drug education program and crime lab fees included base fines of \$150 and \$50, respectively, and various penalty assessments and surcharges. The penalty assessments included: (1) a matching state penalty assessment (Pen. Code, § 1464, subd. (a)(1)); (2) a \$10 state surcharge (*id.*, § 1465.7); (3) a \$25 state court construction penalty (Gov. Code, § 70372); (4) a \$35 additional penalty (*id.*, § 76000, subd. (a)(1)); (5) a \$10 emergency medical services penalty (*id.*, § 76000.5, subd. (a)(1)); (6) a \$5 penalty for the implementation of the DNA Fingerprint, Unsolved Crime and Innocence Protection Act (*id.*, § 76104.6, subd. (a)(1)); and (7) a \$20 forensic laboratories penalty (*id.*, § 76104.7).

In September 2016, defendant admitted violating probation by committing assault with a deadly weapon, spousal abuse, and misdemeanor battery. At sentencing on the probation violation, the trial court imposed a sentence of two years, and reimposed the fines and fees from the original sentencing, including the drug education and crime lab fees. After sentencing and filing the notice of appeal, defendant requested the trial court to delete the penalty assessments imposed on the section 11372.5 and 11372.7 fines. The trial court denied the request.

¹ The substantive facts underlying the offense, and the probation violation, are not relevant to any issue raised on appeal and are therefore not recounted.

² Undesignated statutory references are to the Health and Safety Code.

DISCUSSION

Defendant contends the trial court erred by imposing penalty assessments on the crime lab and drug program fees under sections 11372.5³ and 11372.7,⁴ respectively. Given the similarity of the language in the two statutes for purposes of this issue, the legal analysis is the same for each.

Penalties or assessments must be imposed upon every fine, penalty, or forfeiture imposed by the trial court in a criminal case. (Gov. Code, § 76000; Pen. Code, § 1464.) (*People v. Alford* (2017) 12 Cal.App.5th 964, 968-969 (*Alford*), citing *People v. Talibdeen* (2002) 27 Cal.4th 1151, 1153-1154 (*Talibdeen*).) The language of both sections is inconsistent, variously referring to the levy as a fee that increases “the total fine,” and also as a “fine” “which shall be in addition to any other penalty.” (§§ 11372.5, subd. (a), 11372.7.)

Defendant urges us to follow *People v. Watts* (2016) 2 Cal.App.5th 223 and determine the section 11372.5 and 11372.7 levies are not subject to penalty assessments because they are neither a fine nor a penalty. (*Watts*, at pp. 234-237.) We decline the invitation.

We remain persuaded by our analysis in *People v. Moore* (2017) 12 Cal.App.5th 558, review granted September 13, 2017, S243387, and the other appellate courts that have reached the same conclusion. (See *People v. Martinez* (1998) 65 Cal.App.4th

³ In pertinent part, section 11372.5, subdivision (a), provides: “Every person who is convicted of a violation of Section . . . 11378 . . . shall pay a criminal laboratory analysis fee in the amount of fifty dollars (\$50) for each separate offense. The court shall increase the total fine necessary to include this increment.”

⁴ In pertinent part, section 11372.7, subdivision (a), provides: “Except as otherwise provided in subdivision (b) or (e), each person who is convicted of a violation of this chapter shall pay a drug program fee in an amount not to exceed one hundred fifty dollars (\$150) for each separate offense. The court shall increase the total fine, if necessary, to include this increment, which shall be in addition to any other penalty prescribed by law.”

1511, 1520 (*Martinez*); *People v. Terrell* (1999) 69 Cal.App.4th 1246, 1257; *People v. Turner* (2002) 96 Cal.App.4th 1409, 1413-1414; *People v. McCoy* (2007) 156 Cal.App.4th 1246, 1251-1252; *People v. Sharret* (2011) 191 Cal.App.4th 859, 869; *Alford, supra*, 12 Cal.App.5th at pp. 974-977.) As we recently explained in *Moore*, “[a]lthough *Watts* advances a thoughtful interpretation of section 11372.5, we conclude the language of the statute and the weight of case authority leads to the conclusion the criminal laboratory analysis fee constitutes a fine or penalty for purposes of penalty assessments.” In addition, “the Legislature, which is presumed to be aware of longstanding judicial interpretations of statute [citation], has not amended section 11372.5 to abrogate the holding the section constitutes a fine or penalty in the nearly two decades since the decision in *Martinez, supra*, 65 Cal.App.4th at pages 1520-1522.” (*Moore*, at p. 570.)

Also as noted in *Moore, supra*, 12 Cal.App.5th 558 interpreting the section 11372.5 and 11372.7 levies as fees would be inconsistent with the outcome in *Talibdeen*, where the Supreme Court affirmed the Court of Appeal’s decision to add penalty assessments to a section 11372.5 levy. (*Talibdeen, supra*, 27 Cal.4th at pp. 1153-1154, 1157.) Although the issue in *Talibdeen* was whether a trial court could waive the Penal Code section 1464 and section 76000 penalties on the crime lab fee (*Talibdeen*, at p. 1153), in reaching its conclusion the penalty assessments were mandatory--and their omission could be corrected on appeal despite the lack of objection--the *Talibdeen* court said it was following appellate court decisions, including *Martinez* and *Terrell*, that addressed the issue presented here. (*Talibdeen*, at p. 1157.) As the *Alford* court found, “Because the holdings of these Court of Appeal decisions constituted the logical predicate to the high court’s ultimate conclusion on the mandatory nature of the penalty as applied to a section 11372.5 assessment, we necessarily conclude they were encompassed within the *Talibdeen* court’s holding. [Citation.] If the high court had intended to disavow [these] holdings on this issue or suggest it was not reaching the

propriety of these rulings, it could have said so. It did not.” (*Alford, supra*, 12 Cal.App.5th at pp. 974-975.) Accordingly, we conclude the trial court did not err in imposing penalty assessments on the crime lab and drug program fees.

DISPOSITION

The judgment is affirmed.

_____/s/
HOCH, J.

We concur:

_____/s/
BLEASE, Acting P. J.

_____/s/
MAURO, J.